

BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

FRANK BLACK,
Appellant,
v.

DEPARTMENT OF NATURAL RESOURCES,
Respondent.

Case No. RIF-01-0011

WILLIAM BLACK,
Appellant,

v.

DEPARTMENT OF NATURAL RESOURCES,
Respondent.

Case No. RIF-01-0012

FINDINGS OF FACT, CONCLUSIONS OF
LAW AND ORDER OF THE BOARD

I. INTRODUCTION

1.1 **Hearing.** This matter came before the Personnel Appeals Board, WALTER T. HUBBARD, Chair, and GERALD L. MORGEN, Vice Chair, for hearing on February 27, 2004, at the office of the Personnel Appeals Board in Olympia, Washington.

1.2 **Representation.** Appellants William Black and Frank Black were present and were represented by Mark S. Lyon, General Counsel for the Washington Public Employees Association (WPEA). Kari Hanson, Assistant Attorney General, represented Respondent Department of Natural Resources (DNR).

1.3 **Nature of Appeal.** These are appeals of layoffs due to seasonal lack of work.

II. FINDINGS OF FACT

2.1 Appellants William Black and Frank Black held positions as Equipment Operators in the DNR Northeast Region. By letters dated December 3, 2001, Appellants were notified of their “seasonal layoffs” due to “seasonal lack of work,” effective at the close of business on Monday, December 31, 2001. Appellants each filed an appeal on December 14, 2001.

2.2 On August 20, 2002, the Board granted Appellants’ motion to consolidate the appeals.

2.3 Administratively, DNR is organized into regions: Northeast Region, Southeast Region, Northwest Region, South Puget Region, Olympic Region and Southwest region.

2.4 Appellants are each assigned to one of four Equipment Operator-B positions in DNR’s Northeast Region. DNR has historically hired Equipment Operators in the Northeast Region with their status designated as “permanent with seasonal layoff” in anticipation of harsh winter weather conditions that prevent work from being performed in the winter. The layoff unit for each of these positions is the district to which the position is assigned. DNR established an employment status entitled “permanent with seasonal layoff,” an employment status similar to career seasonal employment, but which extends employment for longer than nine months but not more than twelve months. This employment is specific to DNR to meet the work needs of the department and anticipates a two to three month layoff each year.

2.5 DNR layoff procedures for an employee whose status is “permanent with seasonal layoff” requires that he/she be laid off in accordance to WAC 356-30-330, which guarantees the following

rights: 1) a minimum of 15 calendars days written notice; 2) options in lieu of layoff that would include any option to bump the least senior employee within the applicable layoff unit; and 3) the right to have the employee's name placed on the agency and service-wide RIF registers.

2.6 Employees in the Equipment Operator B class operate construction and earth moving equipment. Typical work includes:

- Operating a bulldozer to clear land, logging, digging ditches, and building road beds; working grades from survey stakes and plan;
- Operating a drag line in dredging or rock removal operations;
- Operating rubber tired backhoes in culvert installation, loading trucks, cleaning of catch basins, and other road maintenance duties;
- Operating excavators in removal of rock, debris, dirt and stumps, culvert installations and other road maintenance duties;
- Servicing, lubricating, adjusts and makes repairs to equipment, assists mechanic in making major repairs;
- Maintaining maintenance and operations records;
- Operating 10-12 yard dump trucks with tilt bed trailers, loads trucks;
- Operating snow removal and snow grooming equipment;
- May lead work of crew assigned to project;
- Performing other work as required.

2.7 Bill Black began work in the Highlands District as a career seasonal Equipment Operator-B in April 1990. Between March 1996 and December 2000, Bill Black worked 58 consecutive months due to numerous extensions. During that time, Appellant experienced only two "seasonal" interruptions. On December 29, 2000, Bill Black was released for his seasonal layoff. By letter dated March 1, 2001, Bill Black was offered "permanent with seasonal layoff" employment as an Equipment Operator B. Steven Meacham, Northeast Regional Manager, informed Appellant that his employment was expected to start on April 3, 2001 and expected to terminate on December 31, 2001. Appellant accepted the employment offer, and began work on April 3.

1 2.8 Appellant Frank Black began work as a seasonal career employee with DNR in 1983 in the
2 South Okanagan District. Between March 1996 and October 1997, Frank Black's work was
3 extended, and as a result, he worked 20 months without interruption. Thereafter, Frank Black's
4 regular season began in March and ended in October or November. By letter dated March 1, 2001,
5 Frank Black was offered "permanent with seasonal layoff" employment as an Equipment Operator
6 B. Mr. Meacham also informed Appellant that his employment was expected to start on April 3,
7 2001 and expected to terminate on December 31, 2001. Appellant accepted the employment offer
8 and began work on April 3.

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11 2.9 During the winter months Appellants' positions were extended, they typically performed the
12 following duties: snow removal, servicing heavy equipment and general repairs to equipment and
13 other special one-time projects.

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15 2.10 In October 2001, DNR Northeast Region contracted with a private company to perform
16 road-brushing work. Documents submitted by Appellants support the road brushing work occurred
17 between October 2001 and November 2001.

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20 2.11 Ron Mally, Heavy Construction Supervisor, was responsible for prioritizing and assigning
21 work to Appellants. Mr. Mally credibly testified that in December 2001, harsh winter conditions
22 and snow froze the ground, and the use of heavy equipment ceased. Mr. Mally credibly testified
23 that during the time at issue here, there was no heavy equipment operator work or any other
24 available work that Appellants could perform during the early winter months beginning with
25 January 2002.

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3 2.12 Steven Meacham, Northeast Region Manager, was Appellants' appointing authority. Mr.
4 Meacham recognized that in prior years, Appellants' positions were extended through winter
5 months to perform other work, such as maintenance and repairs. However, he concluded there was
6 no priority work of that type during the time period in question here. Mr. Meacham determined that
7 there was a seasonal lack of work and no heavy equipment operator work to assign to Appellants.
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10 2.13 By letters dated December 3, 2001, Mr. Meacham notified Appellants of their layoffs
11 effective December 31, 2001. Mr. Meacham notified Appellants that their options under DNR's
12 reduction in force position was separation.
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14 **III. ARGUMENTS OF THE PARTIES**

15 3.1 Respondent argues that Appellants were reduced in force due to a lack of seasonal work and
16 for no other reasons. Respondent acknowledges that Appellants were extended during prior winters
17 but asserts that during the time at issue, there was no work to be performed. Respondent asserts
18 that the brushing work the department contracted out was work the department wanted performed
19 prior to the winter months and that there was no requirement for that work to be held over for
20 Appellants to perform at a later time.
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22 3.2 Appellants argue that there was no lack of work. Appellants contend that they routinely
23 worked through winter months and that at the time of their layoffs, similar work existed that they
24 could have performed. Appellants acknowledge, however, the work they performed during the
25 winter was not roadwork. Appellants further argue that DNR entered into contracts with a private
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1 contractor to do work ordinarily performed by DNR equipment operators and that the work
2 contracted out should have been assigned to them.

3 4 **IV. CONCLUSIONS**

5 4.1 The Personnel Appeals Board has jurisdiction over the parties and the subject matter.

6 4.2 In an appeal of a reduction-in-force, Respondent has the burden of proof. WAC 358-30-
7 170. Respondent has the burden of proving by a preponderance of the credible evidence that it laid
8 the employee off for the reason stated in the RIF letter. O’Gorman v. Central Washington
9 University, PAB No. L93-018 (1995).
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11 4.3 WAC 356-30-330(1), in part, permits an appointing authority to separate an employee
12 because of a curtailment of work. Respondent has provided credible testimony that there was a
13 legitimate lack of work. Respondent was within its right to review its weather conditions and work
14 needs and ultimately determine there was a lack of equipment operator work. Furthermore,
15 Respondent has proven that Appellants had no other employment options. No evidence was
16 provided which supports Appellants assertion that their positions were reduced for any reason other
17 than a lack of work. The brushing work the department contracted out was not heavy equipment
18 operator work, but moreover, it was work performed prior the Appellants’ RIFs and therefore,
19 outside the timeframe at issue here. Appellants’ RIFs were the result of a lack of work, and their
20 appeals should be denied.

21 **V. ORDER**

22 NOW, THEREFORE, IT IS HEREBY ORDERED that the appeals of Frank Black (RIF-01-0011)
23 and William Black (RIF-01-0012) are denied.

24 DATED this _____ day of _____, 2004.
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Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

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